

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yves Auberson
Title: COUMARINES USEFUL AS BIOMARKERS
Appl. No.: 10/506,381
International Filing Date: 3/5/2003
371(c) Date: 6/17/2005
Patent No.: 7,569,337
Grant Date: 8/4/2009
Examiner: Ebenezer O. Sackey
Art Unit: 1624
Confirmation Number: 1643

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 8/4/2009 as U.S. Patent No. 7,569,337.

The Patent Office determined that the patent was entitled to 640 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicant has recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1249 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1336 days
(b) Total Applicant delay:	87 days
Final PTA Determination:	1249 days

Applicant therefore respectfully requests that the patent be accorded 1249 days PTA.

The patent is not subject to a terminal disclaimer.


Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicant requests further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date October 2, 2009

By 

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Docket Number: 093286-0112

Application Number: 10/506381

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	09/06/2004	0		
	14 month From Application date	11/06/2005	426		
Edit Delete	Restriction Requirement	08/06/2007	1,064	638	
	3 Year Period Starts	09/06/2007	1,095		
Edit Delete	Restriction Requirement Response Received at PTO	11/02/2007	1,152		
	Restriction Requirement Response Filed + 4 months	03/02/2008	1,273		
Edit Delete	Non-Final Office Action	05/30/2008	1,362	(89)	
	Non-Final Office Action + 3 months	08/30/2008	1,454		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/25/2008	1,541		87
Edit Delete	Notice of Allowance	03/23/2009	1,659		
Edit Delete	Issue Fee Paid	06/19/2009	1,747		
Edit Delete	Patent Grant Date	08/04/2009	1,793	698	
			Totals:	1,336	87
			PTA:	1,249	

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